Public Process and the Creation of the Race Rocks Marine Protected Area

Sean LeRoy
Georgia Basin Futures Project
Institute for Resources, Environment and Sustainability—University of British Columbia

Rod Dobell
Clayoquot Alliance for Research, Education and Training
Centre for Public Sector Studies—University of Victoria

Tony Dorcey
School of Community and Regional Planning—University of British Columbia

James Tansey
Georgia Basin Futures Project
Institute for Resources, Environment and Sustainability—University of British Columbia

Abstract
This research project evaluates the successes and shortcomings of the consensus process associated with the proposed XwaYeN (Race Rocks) Marine Protected Area, near Victoria, BC. Known as the Race Rocks Advisory Board, this process included government, aboriginal and stakeholder representatives, and was successful at negotiating consensus recommendations in support of designation. Among the recommendations were provisions for the creation of a no-take zone, and for the co-management of Race Rocks by First Nations, BC and Canada. The boundary of the no-take zone was a political compromise that gave only cursory consideration to scientific studies. The provision for co-management was a bold attempt to create a highly protected MPA that still respects aboriginal and treaty rights. Once submitted, these recommendations were misrepresented in the federal government's regulatory approval process, leading to protest by various First Nations and a halt to final designation. It is recommended that future consensus processes be jointly convened by Canada, BC and First Nations, and include more comprehensive representation from the federal government. In effect, this would be a co-managed consensus process— an experiment with public engagement, which is in keeping with the learning-by-doing approach endorsed by federal policies for the creation of MPAs.

Introduction
The creation of a marine protected area in Canada is a political process that must reconcile the wants of several jurisdictions and interests. Federal and provincial governments are called upon to work together, consult affected First Nations, and include the views of user groups and environmental non-governmental organisations. How is this to be achieved? One forum for consultation and reconciliation among such groups is a consensus process, where "individuals representing differing interests engage in long-term, face-to-face discussions, seeking agreement on strategy, plans, policies, and actions" (Innes and Booher 1999 p. 11). Consensus processes have been found to be particularly useful for finding 'non zero-sum' solutions to environmental issues, such as the creation and management of a marine protected area.

In 1998, Canada's Minister of Fisheries and Oceans announced that Race Rocks, British Columbia would be one of Canada's first Marine Protected Areas under the *Oceans Act* (1996). The intent was that Race Rocks would receive full designation after "further consultation and collaboration with local communities, First Nations, stakeholders and the public" (DFO 1998, p. 1). To fulfill the Minister's directive, the Department of Fisheries and Oceans created the Race Rocks Advisory Board, a multi-stakeholder consensus process that brought together representatives from federal and provincial government agencies, First Nations, user groups and Environmental Non-Governmental Organisations. The objective of the Advisory Board was to negotiate consensus recommendations for the design and management of the proposed Marine Protected Area (RRAB 2000b, p. 2).

This study examines the role of the Advisory Board in the proposed designation of the XwaYeN (Race Rocks) Marine Protected Area (XwaYeN, pronounced *shwai'yen*, is the Clallam name for Race Rocks, which was later incorporated into the name of the proposed Marine Protected Area). We begin with a brief history of marine protected areas in British Columbia, and propose a conceptual framework describing the attributes of a good consensus process for the creation of a marine protected area. We then review the proceedings of the Race Rocks Advisory Board, based on public documents

as well as semi-structured interviews with members of the board (n = 12) and actors in the larger designation process (n = 2). We close with an evaluation of the Advisory Board process based on the conceptual framework, as well as recommendations for future processes.

Background

Marine protected areas in British Columbia

Marine ecosystems in British Columbia (BC) exist in a complex jurisdictional space based on the division of federal and provincial powers originally set out in the 1867 *British North America Act*. Briefly put, the federal government is responsible for most marine species and habitats, including marine and anadromous fish species, as well as species and habitats in offshore areas (Jamieson and Levings 2001). The BC provincial government is responsible for a much smaller range of marine species and habitats, but these include the benthic species and habitats of the Georgia Basin, which encompasses Race Rocks.

Despite this division of powers, coastal BC has 125 marine protected areas that meet the broad definition provided by The World Conservation Union (IUCN): "…any area of inter-tidal or sub-tidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment" (Kelleher 1999, p. xviii). However, most of these (116) are provincial entities that do not affect marine fisheries— though some are also protected by federal fisheries regulations. Only four very small areas (totalling 161.85 ha) qualify as no-take zones (also known as marine reserves) closed to all resource extraction (Jamieson and Levings 2001).

The federal government intends to increase the number of marine protected areas and reserves in BC and Canada, and has developed several programs to achieve this end. Most relevant to Race Rocks is the Marine Protected Areas Program, which derives its mandate from the 1996 *Oceans Act* (the National Marine Conservation Areas Program of Parks Canada will not be discussed in this paper). The *Oceans Act* calls upon the federal Department of Fisheries and Oceans (DFO) to coordinate the development of a national system of Marine Protected Areas, defined as areas that are designated for protection for the conservation of:

- Commercial and non-commercial fishery resources, including marine mammals and their habitats.
- Endangered or threatened marine species and their habitats.
- Unique habitats.
- Marine areas of high biodiversity or biological productivity (Oceans Act 1996, p. s. 35(2)).

Since the passing of the *Act*, DFO has created one new MPA (Endeavour Hydrothermal Vents, designated March 9, 2003) and begun the process of creating nine more, three of which are in BC (including Race Rocks).

A key feature of the MPA Program is a Code of Practice which states that DFO will establish MPAs in a "fair and transparent manner," plan and establish MPAs "with the active participation of interested and affected parties," and "promote the use of partnering arrangements in managing MPAs" (DFO 1999, p. 8). While these are promising elements of the MPA Program, before one considers stakeholders there is the crucial issue of consulting and forming partnerships with First Nations. In Canada, the rights and treaties of aboriginal people are protected under the Constitution. Aboriginal rights refer to "practices, traditions or customs which are integral to the distinctive culture of an aboriginal society" (TNO 2002, p. 1), while treaty rights refer to the subset of aboriginal rights that may be described in a treaty.

The degree to which the Crown can infringe upon aboriginal rights has been the subject of several legal tests. Most notably, the *Delgamuukw vs. British Columbia* (1997) decision by the Supreme Court of Canada (SCC) indicated that an infringement on aboriginal rights to natural resources may require the full consent of a First Nation (Pape 1998). The nature of treaty rights has also been addressed in the courts— most recently in the *Regina vs. Marshall* (1999) decision and subsequent clarification (1999), where the SCC indicated that a historical treaty right to participate in an unregulated commercial fishery (in that case, the Mi'kmaq of Atlantic Canada) could evolve into a modern treaty right to participate in a regulated commercial fishery (see Davis and Jentoft 2001).

A further complication is that many First Nations in Canada do not have treaties, or are renegotiating treaties that were originally signed under questionable circumstances. Such negotiations are ongoing in much of coastal BC, where they are guided by a 'government-to-government' protocol, where each party commits to send officials of similar stature to similar forums of discussion, such that chiefs do not find themselves working with secondary federal or provincial officials.

Such is the case of First Nations in the proximity of Race Rocks, who have treaty rights (under the 1850s Douglas Treaties) to "carry on their fisheries as formerly" (MAA 1998, p. 1), but are also in the midst of modern treaty negotiations with BC and Canada. To create an MPA that restricts aboriginal fisheries at Race Rocks, these treaty rights would have to be redefined in the modern treaty negotiation process, and/or infringed upon by the Crown. In either case, it would require consultation with First Nations over an extended period of time, and would have to be designed to respect the 'government-to-government' relationship between First Nations, BC and Canada.

Race Rocks

Race Rocks (48°18' N, 123°32' W, Figure 1) is an archipelago of nine islets that represent the peaks of a submarine mountain consisting of cliffs, chasms, benches, and channels (Murgatroyd 1999). Both Clallam and English names for the area were inspired by the very strong tidal currents that flow through the islets, reaching up to eight knots in intertidal and subtidal areas (Thomson 1981). These fast, turbulent currents provide the marine ecosystem with a constant supply of nutrients and dissolved oxygen, supporting a complex food web of remarkable abundance and diversity. Notably, Race Rocks is a refuge for the threatened Northern abalone (*Haliotis kamtschatkana*) (COSEWIC 2000), and an important haul-out site for pinnipeds. These attract many Killer whales (*Orcinus orca*), including visitors from offshore (transient) populations (DFO 2000).

XwaYen is part of the traditional territories of several Clallam and Northern Straits Salish First Nations, some of who harvested inter-tidal species on the Rocks for both consumption and trade (Pearson College 2000a, b). None of these groups hunted pinnipeds, but the Clallam were known to hunt whales (Suttles 1990). European impact on the Rocks did not begin until the settlement of nearby Victoria, established in 1843 as a Hudson's Bay Company Fort (Walbran 1971). As sea bound trade boomed, the treacherous Rocks began to claim more than their fair share of shipwrecks. The British Admiralty approved the construction of an Imperial Light, which was built in 1860 with pre-cut granite shipped from Scotland (Appleton 1967) (Figure 2).

For the next century, human activity around the Rocks was limited to fishing and lightstation maintenance. This changed in 1974 with the establishment of Lester B. Pearson College in nearby Pedder Bay, which began a scuba diving programme at the Rocks, and soon lobbied the provincial government to provide statutory protection for the area. These efforts led to the designation of the Race Rocks Ecological Reserve in 1980, which protected the islets (except Great Race Rocks, the location of the lightstation) and all inter-tidal and sub-tidal resources under provincial jurisdiction down to the 20-fathom line, the normal limit for scuba divers (Order in Council 692 1980).

By 1990, DFO had brought in regulations that prohibited the harvesting of most living resources in the water column, with the exception of the halibut and salmon sport fishery (DFO 2000). This was followed in 1994 by the announcement that the Canadian Coast Guard was going to automate the Race Rocks Lightstation. In response, Pearson College sought to operate the lightstation buildings as an educational facility, and solicited the help of donors to cover the salary of the former lightkeepers (Canadian Press 1997). The lightkeepers would now be employed as 'eco-guardians' who would monitor activities in and around the Ecological Reserve. The need for 'eco-guardians' derived from the fact that Race Rocks had become a significant destination for coastal tourism and recreation, including whale watching, sport scuba diving, sport fishing (for salmon and halibut) and recreational boating (Murgatroyd 1999).

With this history in mind, the Minister of Fisheries and Oceans announced in 1998 that Race Rocks would be a "Pilot MPA" which would receive full designation after "further consultation and collaboration with local communities, First Nations, stakeholders and the public" (DFO 1998, p. 1). Though DFO had extensive experience consulting with fisheries groups —including First Nations— the agency had limited experience working in a multi-stakeholder context. Race Rocks would be the first test case in implementing the MPA Program, and a point of reference for future endeavours. The centrepiece of the public consultation process was the establishment of the Race Rocks Advisory Board, a multi-stakeholder consensus process that brought together "a reasonably comprehensive cross-section of interest groups and activities" (RRAB 2000b, p. 2).

Consensus Processes

What is a consensus process?

A consensus process is a decision-making forum where "individuals representing differing interests engage in long-term, face-to-face discussions, seeking agreement on strategy, plans, policies, and actions" (Innes and Booher 1999, p. 11). Consensus processes have been found to be particularly useful for finding 'non zero-sum' solutions to environmental

Figure 1. Race Rocks, British Columbia, Canada.

issues, where "one party's gain is not necessarily another party's loss" (Cormick et al. 1996, p. 70). This is important for the creation and management of MPAs, a process that can degenerate into a battle between those advocating environmental protection and those defending economic opportunity (Davis 2002).

Generally speaking, consensus processes have two attributes that distinguish them from other decision-making fora. First, consensus processes are often led by an independent facilitator, "whose focus and expertise is in the management and shepherding of consensus processes and in assisting disputing parties to find common agreement" (Cormick et al. 1996, p. 12). Second, participants negotiate the terms of reference of the process, with particular attention paid to the definition of consensus —the decision rule— which in different processes might be unanimous agreement, a majority vote, or a specified level of support (qualitative or quantitative) (Kaner 1996).

Figure 2. Race Rocks Lightstation.

There are several rationales for the use of consensus processes in the creation of MPAs. Consensus processes usually have better community involvement than traditional regulatory processes, which has been identified widely as a "fundamental criterion for success" in the creation of MPAs (Kelleher 1999, p. 21). Among other benefits, enhanced community involvement has the potential to "empower local users who might not otherwise have a collective voice in decision-making about resource use and allocation", and "allow for more equitable sharing of benefits than might have existed previously" (Agardy 1997, pp. 89-90).

Another rationale is that consensus processes share many features with the "co-management approach" to marine resource management, defined by Jentoft (2000a, pp. 528-9) as "a collaborative and participatory process of regulatory decision-making between representatives of user-groups, government agencies and research institutions." The co-management approach has been shown to be "more robust than any government initiative that relies on force and penalty only," providing "places for communication and deliberation on the procedures, goals and means of the regulatory system" (p. 141). Ideally, both processes are complementary, with a consensus process leading to the designation and then co-management of the MPA.

Finally, consensus processes often provide for fairer participation in decision-making. Hillier (1998, p. 17) describes fair participation as "being listened to with respect, having access to adequate information, being able to question others, having some degree of control over the decision-making procedure and resultant outcome, demonstrating that decisions are made impartially, and receiving good feedback." Fair participation can reduce the role of misinformation in the process, improving the likelihood that consensus decisions are considered legitimate by the participants (Forester 1989).

What makes a good consensus process?

The conceptual framework for this study (Figure 3) is based on the premise that consensus processes for the creation and management of MPAs should seek to provide voice and fair participation, enable co-management, avoid misinformation, and ensure legitimacy in decision-making. To do this, a consensus process should balance the need to both challenge and respect participants and the groups they represent. A consensus process challenges participants by questioning assumptions and seeking compromise from each participant. However, these questions and demands are an act of power, and for this to be accepted each participant and group will want to be treated with respect.

Figure 3. Conceptual framework for this study.

Consensus processes should challenge participants to be **innovative**, to explore "thoughtful solutions that could not be created within the constraints of existing political, legal, or administrative processes" (Cormick et al. 1996, p. 5). A consensus process should also challenge participants to reach **fair decisions**, measured against an independent standard, also agreed to by the participants. This standard may refer to scientific studies on MPAs, or other forms of knowledge. The third challenge to participants is to explore **partnerships in implementation**. A consensus agreement should not be an endpoint; it should be a milestone in an ongoing partnership in support of marine conservancy.

The first way a consensus process can be respectful to participants is to be **inclusive**, inviting the voluntary participation of all parties affected by the MPA. Consensus processes are also respectful if they are **accountable to the participants**. At one level, this means that the consensus process should be designed by the participants. At another level, participants should be accountable to each other, by committing to the process, and by providing effective representation of their constituencies.

Finally, a consensus process should be **respectful of identities**. Consensus processes seek to treat people as equals. However, as stated by Hillier (1998, p. 16), "treating people equally is inherently unequal", particularly across cultural, linguistic and economic divides. Consensus processes should include mechanisms for understanding, respecting and accommodating difference, in the hope of ensuring full participation by all. In the case of MPAs in BC, this applies mostly to aboriginal people, who have a distinct place in Canadian history, as well as rights protected under the Constitution.

The achievement of an appropriate balance between challenge and respect requires **fair process through skilled facilitation**. As Forester (1999, p. 192) writes, facilitators are creators of "collaborative, deliberative spaces in which ... citizens meet and seek to refashion their lived worlds". This calls for skill at "gathering diverse points of view, building a shared framework of understanding, developing inclusive solutions, and reaching closure" (Kaner 1996, p. xvi).

The more challenging the issue at hand, the more likely the facilitator will have to be an independent person, neutral on the content of discussion but "advocating for fair, inclusive and open processes that balance participation and improve productivity while establishing a safe psychological space in which all group members fully participate" (Kaner 1996, p. x). Though independent, such a facilitator should still be knowledgeable enough to ensure that misinformation does not undermine the legitimacy of the process.

Race Rocks Advisory Board

Establishment

The Race Rocks Advisory Board (RRAB) was established in December 1999 to "represent key constituent groups or stakeholders", "provide advice to DFO and BC Parks on the consultation process", "collate and analyse feedback from consultations", "make interim management recommendations to DFO and BC Parks for the establishment of an MPA at Race Rocks", and "ensure community involvement in the establishment and on-going management of the Race Rocks MPA" (RRAB 2000b, p. 2). The intent was to provide recommendations to the Minister of Fisheries and Oceans by the end of March 2000.

The RRAB meetings were preceded by discussions with BC Parks, Parks Canada, Pearson College and others, each of whom suggested participants that represented "a reasonably comprehensive cross-section of interest groups and activities" (RRAB 2000b, p. 2), including government agencies, First Nations, ENGOs, user groups, scientists, educators, and others (Table 1). Of particular importance was the Coast Salish Sea Council (CSSC) —led by a widely respected Coast Salish elder— which was contracted by DFO to provide a form of aboriginal representation that would not interfere with treaty negotiations.

Table 1. Representatives on the Race Rocks Advisory Board.

Sector	Stakeholder
Government	BC Parks
	Fisheries and Oceans
	National Defence
	Parks Canada Agency
First Nations	Coast Salish Sea Council
ENGOs	Canadian Parks and Wilderness Society
	Friends of Ecological Reserves
	Georgia Strait Alliance
User groups	Local marina operators
	Sport divers
	Sport Fishing Advisory Board
	Whale Watch Operators' Association North West
Others	Marine scientists
	Pearson College

Reaching consensus

The RRAB met five times between December 1999 and March 2000. From the start, the RRAB was identified as a consensus-seeking process that sought to include everyone in the discussion. However, the formal features of consensus processes presented earlier —independent facilitation and terms of reference— were not fully developed. Most of the discussions were facilitated by a senior civil servant at DFO, though an independent facilitator was brought in for the fifth meeting (March 22, 2000) to negotiate the wording of the final recommendations. There was an attempt to develop a terms of reference for the process, but it was never formally ratified either by the participants or their constituencies.

There were three dominant issues in the negotiations. The first issue was whether or not to create a no-take zone in part or all of the MPA. Knowing that Race Rocks would set a precedent for future *Oceans Act* MPAs, the ENGOs argued for the creation of a no-take zone, the benefits of which were expected to 'spillover' to adjacent areas in the Georgia Basin (see AAAS 2001). However, this would require the closure of the halibut and salmon sport fishery, the only fishery that remained open in the Race Rocks area. The Sport Fishing Advisory Board and the local marina operators argued against the closure of these fisheries, stating that the fishery would not affect other species in the MPA, and that the closure would not benefit the status of halibut or salmon.

Discussions on this issue were complicated by the presentation, in the second RRAB meeting, of a DFO map that proposed three boundary options for the MPA (Figure 4). Option 1 was to keep the existing boundaries of the Ecological Reserve, which represent the 20-fathom contour line. Option 2 was to 'angularise' the Ecological Reserve boundaries, such that they are easier to mark and enforce. Option 3 was to add 100 m to the angularised boundaries.

The map entrenched the ENGOs and sport fishers along their established positions, with some participants taking their case to the media (see Curtis 2000). To break the deadlock, the DFO facilitator and several representatives continued negotiating outside the consensus table, eventually reaching an understanding that the sport fishers would accept a no-take zone if the ENGOs would accept the boundaries of the Ecological Reserve (Option 1). This entente was formalised in the fifth meeting and included in the consensus recommendations.

The second dominant issue was about finding a way to create an MPA —particularly a no-take zone— that respected aboriginal and treaty rights. As part of this process, the Coast Salish Sea Council (CSSC) held a workshop on the 13-moon traditional seasonal round of Coast Salish peoples, and later a Burning Ceremony attended by a number of Coast Salish hereditary Chiefs (Fletcher 2000). The CSSC also stressed the importance of "recognising First Nations as a level of government (not a stakeholder) in the MPA process" (RRAB 1999, p. 4).

These efforts led to the consensus recommendation that the Race Rocks MPA be co-managed by aboriginal, provincial and federal governments, respecting the 'government-to-government' protocol. The co-managers would consult with a management board, which would include the non-aboriginal members of the RRAB. The no-take zone would not infringe on aboriginal or treaty rights, nor would it prejudice ongoing treaty negotiations. In effect, the MPA would be a no-take zone but for the minimal impact of aboriginal activities. Finally, the Clallam language would be featured in the literature about the MPA, and XwaYeN would be included in the name.

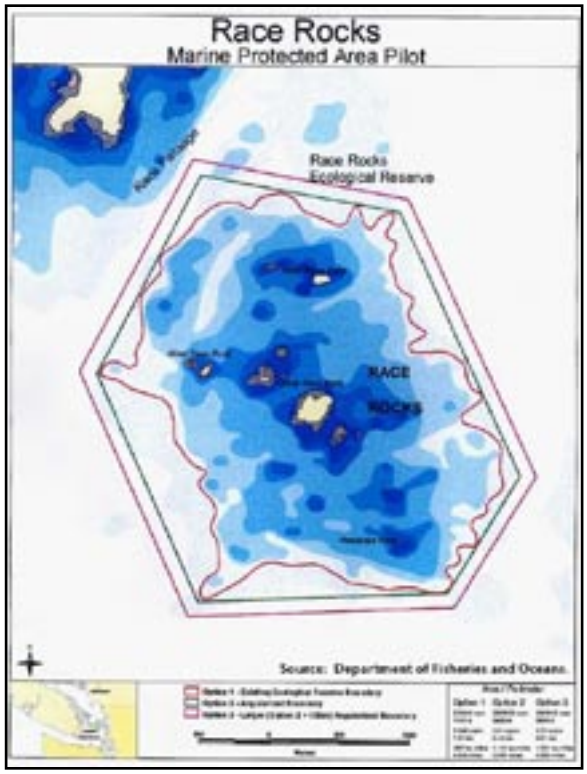

Figure 4. Boundary options for the Race Rocks MPA.

The third dominant issue was the management of non-fishing activities in the MPA. Both the sport diving and whale watch operators sought to establish voluntary guidelines for their activities, arguing that "implementing many regulations would create an atmosphere of trying to find loopholes as opposed to an atmosphere of compliance" (RRAB 2000a, p. 4). This approach was endorsed by the RRAB and included in the consensus recommendations, particularly since Pearson College would be able to monitor the compliance of tour operators, both through the 'eco-guardians' and their recently installed web cameras on the Rocks.

From recommendations to regulations

Despite the obstacles it faced, the RRAB had successfully produced consensus recommendations, and on schedule. Thoughts turned to planning a designation ceremony, and to marshalling the proposed regulations through the federal bureaucracy. While this was underway, however, a significant event occurred. On August 30, 2000, Canadian television news was alight with footage of a DFO boat ramming a Mi'kmaq fishing vessel in Miramichi Bay, New Brunswick, forcing all the occupants to jump into the water (Somerville 2000). This event was the climax of tensions between DFO and the Mi'kmaq First Nation following the release of the *Regina vs. Marshall* (1999) decision and clarification (1999) (see Isaac 2000). The news greatly exacerbated tensions between DFO and First Nations across the country, many of which felt a responsibility to demonstrate their solidarity with the Mi'kmaq.

Despite these events and though the regulatory process was still underway, a 'designation' ceremony went ahead on September 14, 2000, attended by federal and provincial Ministers, as well as members of the RRAB. The whole event was a strain for a representative of the CSSC, who told a reporter: "it's hard for me to sit there as an aboriginal…it took all my energy to sit there" (Watts 2000, p. F4). It also highlighted the distance between the CSSC and the constituencies they were supposed to represent— the ceremony was protested by several members of Douglas Treaty First Nations.

On October 28, 2000, the draft regulations for the XwaYeN (Race Rocks) Marine Protected Area appeared in the Canada Gazette, Part I (O'Sullivan 2000). The proposed regulatory text established the no-take zone within the boundaries of the Ecological Reserve. The accompanying Regulatory Impact Analysis Statement (RIAS) incorporated most of the other consensus recommendations of the RRAB, but also stated: "…although the creation of the MPA does not restrict harvesting by First Nations for food, social or ceremonial purposes, they volunteered to forego this activity in support of the designation of the MPA" (O'Sullivan 2000, p. 3367).

This provision was a surprise to the CSSC, other members of the RRAB, and many at DFO. In November 2000, the Chiefs of several Douglas Treaty First Nations wrote a letter of objection to the Minister of Fisheries and Oceans, citing the *Delgamuukw vs. British Columbia* (1997) decision, infringement of treaty rights, and lack of consultation (RRAB 2001). It is not clear whether this objection was a direct result of the Gazette publication, or whether it derived from earlier events such as Miramichi Bay or the 'designation' ceremony. Regardless, the regulatory process was halted immediately. Caught in the crossfire, the CSSC lost any currency it had as an intermediary between the Douglas Treaty First Nations and DFO, and has not been involved in the deliberations ever since.

In December 2000, DFO met individually with each Chief of the Douglas Treaty First Nations, acknowledging that proper consultation had not taken place (RRAB 2001). By June 2001, the Chiefs had written a letter of support for the MPA, on the condition that there was true co-operation and acknowledgement of Douglas Treaty rights. Negotiations to allow the final designation of the MPA are currently ongoing (April 2003). Though not the forum for these negotiations, the Race Rocks Advisory Board continues to meet on occasion, most recently in December 2002.

Discussion

Evaluation of the consensus process

The Race Rocks Advisory Board is one of DFO's first experiences with consensus decision-making processes. The DFO facilitator was working mostly from scratch, drawing only on broad policies, professional experience and the insights of colleagues. Regardless of the critique presented here, the RRAB process and recommendations were a laudable achievement.

Based on the conceptual framework presented earlier, the RRAB process had a number of successes. The process produced **innovative** recommendations— the co-management provisions would have allowed the creation of a highly protected MPA that respects aboriginal and treaty rights. The process created **partnerships in implementation**, improving the capacity of user groups to engage in volunteer stewardship at Race Rocks. With the exception of Douglas Treaty First Nations, the RRAB process was **inclusive** of most groups that "will affect, or be affected by the MPA" (Kelleher 1999, p. 21).

The RRAB was **respectful of identities**, providing an important cultural learning experience made possible by the successful involvement of the CSSC. Finally, the RRAB was a **fair process** achieved through **skilled facilitation**. Most participants considered the facilitation of the RRAB meetings to be inclusive and fair. Most were also proud of the consensus recommendations negotiated under the guidance of the independent facilitator.

This said, the RRAB process had two significant shortcomings. Because DFO presented the consensus table with three pre-determined boundary options, the negotiated boundary of the MPA was a line drawn in the sand between two adversaries (ENGOs and sport fishers), rather than an **innovative** solution that reflects the integrated management approach embodied by the *Oceans Act*. More critically, the process was not **accountable to the participants**, in that the Regulatory Impact Analysis Statement in the Canada Gazette put words in the mouths of some participants, compromising their personal integrity. A better approach would have been to create a mechanism for the government to reject a particular recommendation, and return it to the RRAB for further consideration.

Recommendations

The difficulties experienced in the RRAB and the regulatory process highlight the importance of designing consensus processes that are able to navigate the stormy seas of MPA creation and management. What would the ideal process look like? The challenges present in the political landscape of coastal BC —particularly related to aboriginal rights and treaties— call for a mix of standard and unique features.

At the beginning, DFO should initiate contact with the relevant First Nations (and BC Parks in areas with provincial seabed or adjoining foreshore). Assuming there is support for the MPA, DFO would invite the First Nations (and BC Parks) to be a joint convenor of the consensus process. As joint convenors, DFO and the First Nations (and BC Parks) would negotiate what form of process co-ordination and facilitation should take place. The possibilities might include joint co-ordination and/or independent facilitation.

Representation in the consensus process should include: DFO— representative(s) with the appropriate level of authority; First Nations— representative(s) with the mandate to negotiate on behalf of all affected First Nations; BC Parks— representative(s) with the appropriate level of authority, depending on whether BC Parks is a contributing participant, a joint convenor, or a joint convenor contemplating parallel designation under provincial legislation; and stakeholders— appropriate representatives as identified by the convenors, and with an open door policy at the beginning of the process.

The consensus process should have a comprehensive terms of reference negotiated by the participants, including (among other things) a clear definition of the meaning of consensus, and a timeline for reaching consensus. The options to be considered in the designation of the MPA should be developed by the participants in the consensus process. This may include the commissioning of studies (scientific and otherwise) in support of the negotiations.

All participants should accede to the consensus recommendations negotiated in the process. If the recommendations are unacceptable to the government, they should be openly rejected and returned to the consensus table where alternatives can be negotiated by the participants. The consensus table should meet throughout the designation process, so that it is able to provide advice and address complications as they arise. Finally, the participants in the consensus process should have continued involvement in the implementation and management of the MPA.

Acknowledgements

This research was made possible by funding from the Georgia Basin Futures Project (Social Sciences and Humanities Research Council of Canada) and the Canadian Institute of Planners.

References

AAAS (American Association For the Advancement of the Sciences), 2001. *Scientific Consensus Statement on Marine Reserves and Marine Protected Areas*. Petition. National Center for Ecological Analysis and Synthesis, University of California: Santa Barbara, California.

Agardy, T. S., 1997. *Marine Protected Areas and Ocean Conservation*. Academic Press: San Diego, California.

Appleton, T. E., 1967. *Usque Ad Mare*. Canadian Coast Guard: Ottawa, Ontario.

Canadian Press, 1997. Benefactor funds lighthouse (Race Rocks on Vancouver Island). *Canadian Press Newswire* (January 19, 1997).

Cormick, G., N. Dale, P. Emond, S. G. Sigurdson, and B. D. Stuart, 1996. *Building Consensus for a Sustainable Future: Putting Principles into Practice*. National Round Table on the Environment and the Economy: Ottawa, Ontario.

COSEWIC (Committee on the Status of Endangered Wildlife in Canada), 2000. *COSEWIC Species Database*. Online database (http://www.cosewic.gc.ca/eng/sct1/index_e.htm). Government of Canada: Ottawa, Ontario.

Curtis, M., 2000. A rocky road: not everyone wants Race Rocks declared a protected marine area. Page A1 in *Victoria Times-Colonist*, February 27, 2000.

Davis, A., and S. Jentoft, 2001. The challenge and the promise of indigenous peoples' fishing rights: from dependency to agency. *Marine Policy*, **25**: 223-37.

Davis, J. B., 2002. Human dimensions of MPAs: facing the challenges of social science and its implementation. *MPA News*, **4** (1): 1-4.

Delgamuukw vs. British Columbia, 1997. 3 SCR 1010. December 11, 1997.

DFO (Department of Fisheries and Oceans), 1998. *Minister of Fisheries and Oceans Announces Pilot Marine Protected Areas for Pacific Coast.* News release. Government of Canada: Vancouver, BC.

DFO (Department of Fisheries and Oceans), 1999. *Marine protected areas policy*. Government report. Government of Canada: Ottawa, Ontario.

DFO (Department of Fisheries and Oceans), 2000. *Proposal to Designate ›°áy°© (Race Rocks) Marine Protected Area*. Government report. Government of Canada: Vancouver, BC.

Fletcher, G., 2000. *The Beecher Bay Ceremony, March 9, 2000*. Web page (http://www.racerocks.com/pearson/racerock/admin/rrab/beecherbayceremony.htm). Lester B. Pearson College. Accessed June 1, 2001.

Forester, J., 1989. *Planning in the Face of Power*. University of California Press: Berkeley, California.

Forester, J., 1999. *The Deliberative Practitioner: Encouraging Participatory Planning Processes*. MIT Press: London, UK.

Hillier, J., 1998. Beyond confused noise: ideas toward communicative procedural justice. *Journal of Planning Education and Research*, **18** (1): 18-24.

Innes, J. E., and D. E. Booher, 1999. Consensus building as role playing and bricolage: toward a theory of collaborative planning. *Journal of the American Planning Association*, **65** (1): 9-26.

Isaac, T., 2000. No end in sight: even if Bob Rae gets a ceasefire today in Miramichi, the struggle over fishing rights will continue, says veteran treaty negotiator. Page A1 in *Globe and Mail*, September 19, 2000.

Jamieson, G. S., and C. O. Levings, 2001. Marine protected areas in Canada: implications for both conservation and management. *Canadian Journal of Fisheries and Aquatic Science*, **58**: 138-56.

Jentoft, S., 2000a. Co-managing the coastal zone: is the task too complex? *Ocean & Coastal Management*, **43**: 527-35.

Jentoft, S., 2000b. Legitimacy and disappointment in fisheries management. *Marine Policy*, **24**: 141-8.

Kaner, S., 1996. *Facilitator's Guide to Participatory Decision-Making*. New Society Publishers: Gabriola Island, BC.

Kelleher, G., editor. 1999. *Guidelines for Marine Protected Areas*. World Commission on Protected Areas: Gland, Switzerland.

MAA (Ministry of Aboriginal Affairs), 1998. *Historical References*. Government report. Government of British Columbia: Victoria, BC.

Murgatroyd, L. V., 1999. *Managing tourism and recreational activities in Canada's marine protected areas: the pilot project at Race Rocks, British Columbia*. Unpublished Master of Marine Management thesis. Marine Affairs Program, Dalhousie University: Halifax, NS.

Oceans Act, 1996. 44 Eliz. II (Can.), c. 31.

Order in Council 692, 1980. *Ecological Reserves Act*, RSBC 1996, c. 103.

O'Sullivan, M., 2000. XwaYeN (Race Rocks) marine protected area regulations. *Canada Gazette, Part I*, **134** (44): 3364-72.

Pape, A., 1998. *Delgamuukw: A Summary of the Supreme Court of Canada Decision*. Web page (http://www.cstc.bc.ca/treaty/delgmkwsmry.html). Pape and Salter. Accessed June 6, 2001.

Pearson College, 2000a. *Earle Claxton Talks about the Marine Invertebrate Resources*. Quicktime movie (http://www.racerocks.com/pearson/racerock/archives/archives_9a.htm). Lester B. Pearson College. Accessed June 12, 2001.

Pearson College, 2000b. *Earle Tells Us about the Food and Medicinal Role of Some Marine Algaes from the Intertidal Areas*. Quicktime movie (http://www.racerocks.com/pearson/racerock/archives/archives_9b.htm). Lester B. Pearson College. Accessed June 12, 2001.

Regina vs. Marshall, 1999. 3 SCJ 456.

Regina vs. Marshall (clarification), 1999. 3 SCR 533.

RRAB (Race Rocks Advisory Board), 1999. *Draft Minutes of Race Rocks Advisory Board Meeting No. 1, December 1, 1999*. Web page (http://www.racerocks.com/racerock/admin/rrab/rrabdec1minutes.htm). Lester B. Pearson College: Metchosin, BC. Accessed June 7, 2001.

RRAB (Race Rocks Advisory Board), 2000a. *Draft Minutes of Race Rocks Advisory Board Meeting No. 4, February 23, 2000*. Web page (http://www.racerocks.com/racerock/admin/rrab/rrabfeb23min.htm). Lester B. Pearson College: Metchosin, BC. Accessed June 7, 2001.

RRAB (Race Rocks Advisory Board), 2000b. *Race Rocks Advisory Board Terms of Reference*. Web page (http://www.racerocks.com/racerock/admin/rrab/termsofrefer.htm). Lester B. Pearson College: Metchosin, BC. Accessed June 7, 2001.

RRAB (Race Rocks Advisory Board), 2001. *Draft Minutes of Race Rocks Advisory Board Meeting No. 6, December 6, 2001*. Web page (http://www.racerocks.com/racerock/admin/rrab/rrabmins61201.htm). Lester B. Pearson College: Metchosin, BC. Accessed June 30, 2002.

Somerville, F., 2000. *Burnt Church diaries*. Web page (http://cbc.ca/news/indepth/fishing/diary.html). Canadian Broadcasting Corporation. Accessed July 24, 2002.

Suttles, W., 1990. Central Coast Salish. Pages 453-84 in W. Suttles, editor. *Northwest Coast*. Smithsonian Institution: Washington, DC.

Thomson, R. E., 1981. *Oceanography of the British Columbia Coast*. Department of Fisheries and Oceans, Government of Canada: Ottawa, Ontario.

TNO (Treaty Negotiation Office), 2002. *Glossary of Treaty-related Terms As Used by the Province of British Columbia*. Web page (http://www.gov.bc.ca/tno/rpts/glossary.htm). Treaty Negotiation Office, Ministry of Attorney General, Government of British Columbia: Victoria, BC. Accessed August 4, 2002.

Walbran, J. T., 1971. *British Columbia Coast Names: Their Origin and History*. Douglas and McIntyre: Vancouver, BC.

Watts, R., 2000. Protection for a marine treasure: precedent-setting designation for Race Rocks waters draws protest from natives. Page F4 in *Victoria Times-Colonist*, September 15, 2000.